

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19259
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On January 4, 2006, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income tax in the amount of \$61 for the period ending December 31, 2001.

The taxpayer filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The Tax Commission received the taxpayer's 2001 Idaho individual income tax return on November 3, 2005. Because the time for claiming the refund reflected in that return had expired, a letter was sent to the taxpayer informing him of the adjustment to deny the refund. The taxpayer objected to the intended action, and a certified notice was sent to allow him the opportunity for administrative review. The file was transferred to the Legal/Tax Policy Division for the Commission's review.

In the taxpayer's letter of protest, the taxpayer's preparer asked to have the refund shown in the return applied to the balance owing for the 2003 tax year. He said the taxpayer filed four years of delinquent returns and paid the net amount for all returns.

Idaho Code provides for a limit on the time taxpayers have to claim a credit or refund as follows:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) **Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.** (Emphasis added.)

Idaho Code § 63-3035(e) states:

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be**

made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho law provides for a credit or refund of any overpayment; however, the claim for the credit or refund must be made within a certain timeframe. The Tax Commission did not get the taxpayer's claim for a refund until the taxpayer's return was received November 3, 2005. Unfortunately, the time allowed for claiming the 2001 refund or credit expired on April 15, 2005.

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections "shall be made. . ." is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayer's refund or credit claim for tax year 2001. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated January 4, 2006, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]